

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ALPHA HOLLOWAY,)	
)	
Plaintiff,)	
)	
v.)	No. 4:07 CV 218 DDN
)	
AMERISTAR CASINO ST. CHARLES,)	
INC., JAMES A. BENNETT,)	
and MERCILE BEHM,)	
)	
Defendants.)	

MEMORANDUM AND THIRD AMENDED CASE MANAGEMENT ORDER

This action is before the court following the hearing held on September 11, 2008.

On that date the court heard the parties on the several pending discovery motions, including plaintiff's third motion to amend the Case Management Order (Doc. 82) and plaintiff's first motion to compel discovery from defendant Ameristar Casino St. Charles, Inc. (Doc. 85). At the hearing, court and counsel discussed some of the pending discovery issues and counsel conferred among themselves about them. To the court's understanding, the result of those conferences included an agreement of counsel about the production by defendant of the relevant video recording materials. Other discovery issues were discussed by counsel. The video recording discovery is the subject matter of the order the court filed on September 22, 2008, Document 102.

To the court's understanding, the parties were to continue conferring after the September 11, 2008 hearing in an effort to amicably resolve the other pending discovery matters, including those raised by plaintiff's second motion to compel discovery from defendant Ameristar Casino, Document 92. To the court's further understanding, the parties were to bring to the court's attention any continuing discovery dispute which remained after the September 11 hearing; absent such notification, the court could consider those matters amicably resolved.

On September 11, following the hearing, defendants Ameristar and Behm filed a supplemental memorandum in opposition to plaintiff's third motion to amend the Case Management Order (Doc. 96) and on September 17,

2008, plaintiff filed her reply to defendants' memorandum (Doc. 97). Ameristar objects to plaintiff's noticing 38 depositions in 68 days; objects to any amendment of the Case Management Order that does not allow defendants sufficient time to file dispositive motions, to depose plaintiff's expert, to identify and depose Ameristar's expert(s), and to prepare for trial. Plaintiff rejoins by noting efforts to confer with counsel for defendant to ameliorate the discovery schedule.

In light of these issues, the court has reviewed the current deadlines set out in the Second Amended Case Management Order which was filed on February 15, 2008, Document 68. After such review, the court will change the schedule and sets requirements for the conclusion of the pretrial discovery, all as set forth below.¹

Whereupon,

IT IS HEREBY ORDERED that the third motion of plaintiff to amend the Case Management Order (Doc. 82) is sustained in part and otherwise denied as follows:

1. The jury trial of the action remains set for March 30, 2009 at 9:00 a.m. The final pretrial conference remains set for March 24, 2009 at 1:00 p.m. The parties shall file their compliance with the pretrial order not later than March 16, 2009.
2. The hearing on any dispositive motion and any expert witness motion is reset to Friday, February 20, 2009 at 9:00 a.m.
3. Any dispositive motion and any expert witness motion shall be filed not later than January 17, 2009. Any response thereto shall be filed not later than January 24, 2009. Any reply thereto shall be filed not later than January 31, 2009.
4. Plaintiff shall disclose all expert witnesses and provide the reports of said witnesses, required by Fed. R. Civ. P. 26(a)(2) not later than November 1, 2008 and submit said witness for deposition not later than December 1, 2008.

¹Complicating the progress of the pretrial discovery in this case is the requirement of the court that the parties submit the case to mediation and that the mediation conclude on or before November 10, 2008. See Doc. 94. In spite of the discovery issues experienced by the parties, the court believes from the record that the parties have exchanged sufficient information to engage in meaningful mediation efforts, during the period currently ordered.

5. Defendants shall each disclose all expert witnesses and provide the reports of said witnesses, required by Fed. R. Civ. P. 26(a)(2) not later than December 15, 2008 and submit said witnesses to deposition not later than January 15, 2009.
6. All non-expert pretrial discovery shall be completed not later than January 10, 2009.
7. Because of the difficulty experienced by the parties in identifying and scheduling witnesses for deposition, unless agreed to by all parties, plaintiff shall be limited in the future to deposing 25 witnesses and defendants shall be limited in the future to deposing a total of 25 witnesses. These numbers of witnesses include expert witnesses.
8. Because of the difficulty experienced by the parties in identifying and scheduling witnesses for deposition, unless agreed to by all parties, no party may support or oppose any dispositive motion or motion regarding any expert witness, with the written affidavit of any witness, or presentation of information or evidence relating to any witness, whose deposition was noticed by the opposing party but whose deposition was not taken in advance of the filing of the dispositive motion or the motion regarding expert witnesses. Further, unless agreed to by all parties, no party may call as a trial witness any witness whose deposition was noticed by the opposing party but whose deposition was not taken prior to the conclusion of all pretrial discovery on January 10, 2009.

IT IS FURTHER ORDERED that the second motion of plaintiff to compel discovery from defendant Ameristar Casino (Doc. 92) is denied as moot without prejudice.

IT IS FURTHER ORDERED that a hearing on the first motion of plaintiff to compel discovery from defendant Mercile Behm (Doc. 93), and any other outstanding discovery issue, whether or not the subject of a motion to compel, is set for October 10, 2008 at 2:00 p.m.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on September 26, 2008.